

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

Kevin Embry,

NO. C 09-01808 JW

Plaintiff,

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR LEAVE TO SEEK  
RECONSIDERATION**

v.

ACER America Corp.,

Defendant.

Presently before the Court is Plaintiff's Motion for Leave to Seek Reconsideration of the Court's Order Granting in part Plaintiff's Motion to Require Appellate Bond.<sup>1</sup> Plaintiff previously asked the Court to require Objector Christopher Bandas ("Objector Bandas"), along with Objector Samuel Cannata ("Objector Cannata"), to post an appellate bond in order to appeal the class action settlement approved by the Court.<sup>2</sup> The Court granted Plaintiff's Motion as to Objector Cannata, but denied it as moot as to Objector Bandas, because the latter's appeal had already been dismissed by the Ninth Circuit for failure to pay fees.<sup>3</sup> However, since the Court issued its June 5 Order, Objector Bandas' appeal has been reinstated by the Ninth Circuit following his payment of fees.<sup>4</sup> Thus, in the

<sup>1</sup> (Plaintiff's Motion for Leave to Seek Reconsideration re Order Granting in part Plaintiff's Motion to Require Appellate Bond, hereafter, "Motion," Docket Item No. 257.)

<sup>2</sup> (See Docket Item No. 232.)

<sup>3</sup> (Order Granting in part Plaintiff's Motion to Require Appellate Bond, hereafter, "June 5 Order," Docket Item No. 253.)


<sup>4</sup> (See Docket Item No. 259.)

1 present Motion, Plaintiff asks the Court to reconsider its June 5 Order in light of the changed factual  
2 circumstances. To date, no Opposition to the Motion has been filed.

3 Upon review, the Court finds good cause to allow Plaintiff to seek reconsideration of the  
4 Court's June 5 Order. Reconsideration is appropriate where there has been an "emergence of new  
5 material facts" after an order is issued. See Civ. L.R. 7-9(b)(3). The Court finds that the  
6 reinstatement of Objector Bandas' appeal by the Ninth Circuit constitutes a new material fact  
7 meriting reconsideration of the Court's June 5 Order. Accordingly, the Court GRANTS Plaintiff's  
8 Motion for Leave to Seek Reconsideration of the June 5 Order and ORDERS as follows:

- 9 (1) On or before **July 13, 2012**, Plaintiff shall file his Motion for Reconsideration as a  
10 separate docket item.
- 11 (2) On or before **July 18, 2012**, Objector Bandas shall file his Opposition.
- 12 (3) On or before **July 20, 2012**, Plaintiff shall file his Reply, if any. Upon completion of  
13 the briefing, Plaintiff's Motion shall be taken under submission without oral  
14 argument. See Civ. L.R. 7-1(b).

15  
16 Dated: July 10, 2012

  
\_\_\_\_\_  
JAMES WARE  
United States District Chief Judge

**THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

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**Dated: July 10, 2012**

**Richard W. Wieking, Clerk**

By: /s/ JW Chambers  
**William Noble**  
**Courtroom Deputy**